ity would result, public policy must necessarily dictate that the extraordinary general meeting, the second annual general meeting and the various resolutions should not be invalidated. To hold otherwise would be contrary to the purpose and spirit of an Act which seeks to provide for the efficient administration and management of subdivided buildings.

In *Montreal Street Railway Co* v *Normandin*,[14] the House of Lords applied the following principle:

> When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done.

In the present case, sanctions for non-compliance are specifically provided by the Act, s 28(5) of which states:

> If the management corporation makes default in complying with any requirements of, or duties imposed upon it by, any of the provisions of the First Schedule to this Act the management corporation and every member of its Council, or every subsidiary proprietor, who is knowingly a party to the breach or default, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five hundred dollars.

In my judgment, even if there was non-compliance in this case, such non-compliance would be adequately dealt with by the available sanctions under s 28(5), and should not render null and void the meetings and resolutions complained of, as otherwise the very mischief of bad management and chaotic management which the Act seeks to prevent would result.

There remains only the appellant's appeal against the judgment in respect of that part of his counterclaim which had not been awarded to him, consisting of a claim for the repayment of $1,256.31 alleged to have been paid by him for maintenance contributions on 30 April 1984 under a fundamental mistake of fact, and a claim for $1,600 for the loss of the use and enjoyment of his Skyvilla flat, totalling $2,856.31. In view of the conclusions which I have reached on the maintenance contributions, I shall not deal with the counterclaim for the refund of $1,256.31. The remaining claim for $1,600 arose from the blockage of a drainage down pipe which it was alleged resulted in an overflow of water into the kitchen of the appellant's Skyvilla flat from about 13 January 1986 until the problem was resolved on 15 February 1986. The appellant contended that because of this the tenant did not pay the February 1986 rent of $1,500 and presumably this was pro-rated by him to $1,600. The appellant admitted however that the tenant, a company, had failed to pay not only the February 1986 rent but also the rent for the next three months, because it was in liquidation. The learned district judge therefore found, and I agree, that the loss to the appellant was due to the financial straits of the tenant and not to any cause connected with the state of the property which might be attributed to the corporation. Before me, this aspect of the appeal was covered by ground 67 of the 68 grounds of appeal, and quite properly was not pressed.

Accordingly, the appeals against the judgments in favour of the corporation in DC Summons No 11661/84 and MC Summons No 11447/86, including the appeal in respect of the remainder of the counterclaim, are dismissed with costs.

Appeals dismissed.

Solicitors: *Lee & Lee; Arthur Loke & Partners.*

Reported by *Rosalind Tan*

Chota bin Abdul Razak v Public Prosecutor

HIGH COURT (SINGAPORE) — MAGISTRATE'S APPEAL NO 107/90/01
THEAN J
14 MARCH 1991

Criminal Procedure — Statement of facts — Enables court to ascertain whether accused understands plea and that ingredients of offence made out — Criminal Procedure Code (Cap 68, 1985 Ed), s 180

Criminal Procedure — Sentencing — Trafficking — Court should not be influenced by subsequent legislation enhancing punishment — Amount of drugs substantial — Whether sentence manifestly excessive — Misuse of Drugs Act (Cap 185, 1985 Ed), ss 5 & 33

Criminal Law — Common intention — Not a substantive offence — Penal Code (Cap 224, 1985 Ed), s 34

The appellant was arrested on 26 March 1987 and charged in DAC 2754/87 with trafficking in 2.6kg of cannabis. He was released on bail. On 22 December 1988, the appellant was arrested and charged in DAC 13751/88 and 13752/88 for two offences, one of trafficking and one of possession of drugs. No bail was granted and he was remanded. On 10 May 1989, the appellant was produced in court where he pleaded guilty to all charges. He, however, disputed the facts in DAC 2754/87, claiming that he did not commit this offence in common intention with one Tan Chuan Ten. He admitted that he did traffic in the amount of cannabis charged. All three charges were adjourned. On 17 May 1989, the appellant was produced in court again and asked to plead to DAC 13751/88 and 13752/88 only. He pleaded guilty and was sentenced to three years' imprisonment and three strokes of the cane on the trafficking charge and to one year's imprisonment in respect of the possession charge, the sentences to run consecutively. On 20 February 1990, the appellant was produced in court again and pleaded guilty to DAC 2754/87. He was sentenced to five years' imprisonment and three strokes of the cane. The sentence of imprisonment was ordered to commence on 20

February 1990 pursuant to s 234(1) of the Criminal Procedure Code (Cap 68, 1985 Ed) ('CPC').

The appellant appealed against the sentence, claiming that he had been prejudiced by the adjournment of 10 May 1989 and having to plead to the charges separately.

Held, dismissing the appeal:

(1) There is no express provision in the CPC requiring an accused to admit a statement of facts presented to court before his plea can be accepted. The practice of presenting a statement of facts setting out the circumstances in which the offence was committed and the accused admitting such facts enables the court to ascertain that the accused understands the nature of his plea and intends to admit without qualification the offence alleged against him.

(2) It is therefore essential that what the accused admits to in the statement of facts contains all the ingredients of the offence. It is not essential, however, that the accused should admit every iota of facts contained in the statement. If what he admits contains all the ingredients of the offence and what he disputes or does not admit is irrelevant or immaterial to the offence, such an admission, is sufficient and the court should accept the plea.

(3) Section 34 of the Penal Code (Cap 224, 1985 Ed) did not create a substantive offence. It lays down only a rule of evidence to infer joint responsibility for a criminal act performed by a plurality of persons.

(4) The appellant's plea should have been accepted on 10 May 1989. Since he admitted committing the offence of trafficking, it was immaterial whether or not there existed the common intention between him and Tan.

(5) However, it was difficult to say, and it would not be right to speculate the sentence that the court would have handed down or ordered had it dealt with all three charges on 10 May 1989. It therefore could not be said that the appellant had been seriously prejudiced by the events that had occurred.

(6) An accused ought to be punished in the circumstances in existence at the time of commission of the offence and in accordance with the legislation then in force. It was not correct to take into account subsequent legislation.

(7) The amount of cannabis involved was substantial. In addition, while the accused was on bail, he committed two further offences of trafficking and possession of drugs. They go to show his attitude of mind. The term of five years' imprisonment was not manifestly excessive in the circumstances.

Cases referred to

1 *Palan* v *PP* [1932] MLJ 124 (folld)
2 *Re Mohamed Miskin Son of Kader Bacha* [1939] MLJ 289 (folld)
3 *Cheng Ah Sang* v *PP* [1948] MLJ 82 (folld)
4 *Chin Ban Keat* v *R* [1949] MLJ 297 (folld)

Legislation referred to

Criminal Procedure Code (Cap 68, 1985 Ed) ss 180, 234
Misuse of Drugs Act (Cap 185, 1985 Ed) ss 5, 33
Penal Code (Cap 224, 1985 Ed) s 34

Sant Singh (*Gurbachan Singh* with him) for the appellant.
Seng Kwang Boon (Deputy Senior State Counsel) for the public prosecutor.

Cur Adv Vult

Thean J: The accused, Chota bin Abdul Razak ('the accused'), in the district court in DAC 2754 of 1987 pleaded guilty to the following charge against him:

> You, Chota bin Abdul Razak (m/28), I/C No 1410767-C, are charged that you, on or about 26 March 1987, at about 4.45pm at the void deck of Block 637, Ang Mo Kio Avenue 6, Singapore, in furtherance of the common intention with one Tan Chuan Ten (m/27), I/C No 2183701-F, did traffic in a controlled drug specified in Class B of the First Schedule of the Misuse of Drugs Act (Cap 185, 1985 Ed), to wit, by transporting 2.6kg (net) of cannibis in motor pick-up GD 8441D from Ang Mo Kio Street 61 to the car park in front of Block 637, Ang Mo Kio Avenue 6, without authorization under the said Act or the Regulations made thereunder, and you have thereby committed an offence under s 5(a) of the Misuse of Drugs Act (Cap 185, 1985 Ed), read with s 34 of the Penal Code (Cap 224), and punishable under s 33 of the Misuse of Drugs Act (Cap 185, 1985 Ed).

He was convicted and sentenced to a term of imprisonment of five years and three strokes of the cane. Against the sentence of imprisonment, this appeal is now brought.

The facts as admitted by the accused before the learned district judge were briefly these. On 26 March 1987 at about 4.30pm, a motor pick-up was seen by a party of narcotics officers entering the car park in front of Block 637, Ang Mo Kio, Avenue 6; these narcotics officers had prior to the time taken up their respective positions in the vicinity. In the motor pick-up were the accused and one Tan Chuan Ten ('Tan'). The motor pick-up stopped at a parking lot in front of Block 637, and the accused alighted from the vehicle and went to the first floor of the block of flats, while Tan waited at the void deck. The accused was carrying a polythene bag when he went to the first floor. A few minutes later the accused came down, still carrying the polythene bag. He placed the bag on the front passenger seat of the motor pick-up and then joined Tan. A short while later the accused went across to Block 635 where he was seen standing at the telephone stand. When the accused went back to join Tan, he and Tan were arrested. The polythene bag was seized and found to contain 2.6kg of cannabis.

The main arguments of counsel for the accused have been centred on the rather unusual circumstances in which the accused pleaded guilty to the charge, and it is necessary to recount briefly the events leading to his plea and conviction, which have been set out quite fully in the grounds of decision of the learned district judge. The accused was arrested on 26 March 1987 and was produced in the district court and charged. He was released on bail on 4 April 1987. Subsequently, his case was mentioned on three occasions and eventually was fixed for hearing on 9 May 1988. On that day, the case, for some reason, was not heard, and was further mentioned on two other occasions, and on the second occa-

sion it was fixed for hearing on 13 March 1989; five days were allocated for hearing this case.

In the meanwhile, on 22 December 1988 the accused was arrested in connection with two offences of trafficking in and possession of drugs alleged to have been committed on 2 September 1988. On 23 December 1988, he was produced in court and charged for these two offences in DAC 13751 of 1988 and DAC 13752 of 1988; no bail was granted and he was remanded in custody.

The case in DAC 2754 of 1987 was not heard on 13 March 1989 as fixed. It is not clear from the record what happened on that day in relation to this case. Presumably, the accused intended to plead guilty to this charge and it was agreed or decided that all the three charges against the accused should be brought up and dealt with together. On 10 May 1989, the accused appeared before the district judge, Mr Yong Yung Sui; he was represented by counsel. He pleaded guilty to the three charges in DAC 2754 of 1987, DAC 13751 of 1988 and DAC 13752 of 1988 respectively. However, the accused disputed certain facts presented by the prosecution in connection with the charge in DAC 2754 of 1987. I was told, and this was not disputed by the prosecution, that what the accused disputed was the complicity of Tan in the commission of the offence. He admitted that he did traffic in the amount of cannabis as charged. So, in effect, he disputed that there was a common intention subsisting between him and Tan. With reference to the two charges in DAC 13751 of 1988 and DAC 13752 of 1988, there was no dispute on the facts presented by the prosecution. However, his pleas of guilty to the three charges were not accepted and the hearing of all the three cases was adjourned. The reason for this is not clear. Probably the learned district judge was of the view that as all the three cases concerned the same accused they should be dealt with together, and he adjourned the hearing to enable the prosecution and the defence to resolve their differences on the facts in relation to the charge in DAC 2754 of 1987.

Strangely enough, seven days later, on 17 May 1989, the accused appeared before another district judge, Mr Colin Chai, to answer only the charges in DAC 13751 of 1988 and DAC 13752 of 1988. The charge in DAC 2754 of 1987 was not brought up for disposal then. The reason for this is again unclear. The accused was still represented by counsel. There was nothing on record to indicate that counsel had asked for an adjournment of the hearing of the two cases or asked for the case in DAC 2754 of 1987 to be brought forward so that all three of them could be dealt with together. Be that as it may, the accused pleaded guilty to the two charges and was convicted and sentenced, in respect of the charge in DAC 13751 of 1988, to a term of imprisonment of three years and three strokes of cane, and in respect of the charge in DAC 13752 of 1988, to a term of imprisonment of one year, the two terms of imprisonment to run consecutively, with the first term to commence on 23 December 1988.

There remained the charge in DAC 2754 of 1987, which was not brought before the court until about 11 months later. On 20 February 1990, the accused appeared before the district judge, Mr FG Remedios. On that occasion he pleaded guilty to the charge and admitted the statement of facts and also additional facts which clarified the statement; there was then no dispute of any fact. He was convicted and sentenced to a term of five years' imprisonment and three strokes of cane, and the sentence of imprisonment was ordered to commence on that day pursuant to s 234(1) of the Criminal Procedure Code (Cap 68, 1985 Ed) ('CPC').

The main complaint of the accused has been directed at the manner in which the proceedings in respect of DAC 2754 of 1987 had been conducted in the district court. It was submitted by his counsel that when the accused appeared before the district judge, Mr Yong Yung Sui on 10 May 1989 and pleaded guilty to this charge and also to the two charges in DAC 13751 of 1988 and DAC 13752 of 1988 respectively, the learned judge should have accepted his pleas and sentenced him accordingly on that day. The accused admitted committing the offence of trafficking in the quantity of drugs as alleged in the charge; what he did not admit, and in fact disputed, was the complicity of Tan in the commission of the offence, ie the common intention alleged to be subsisting between him and Tan. As the accused had admitted that he himself committed the offence, so far as he was concerned, the element of common intention was no longer an essential ingredient of the charge against him. Therefore, the learned judge, it was submitted, should have disregarded this dispute of common intention which had become immaterial. If the learned judge had accepted his plea of guilty to this charge, he would also have dealt with the accused's pleas of guilty to the other two charges and passed the appropriate sentences on the accused in respect of all the three charges. In those circumstances, it would be likely that two of the sentences would have been ordered to run concurrently and the first sentence would have been ordered to commence from 23 December 1988. However, as the events had turned out, so counsel submitted, the accused was not convicted and sentenced in respect of the charge in DAC 2754 of 1987 until 20 February 1990, and his sentence then could commence only from that day, as he was then serving a sentence of imprisonment. His position therefore had been prejudiced. These arguments raise two questions: (i) whether the learned judge was right in not accepting the accused's plea of guilty on 10 May 1989 in view of

the dispute on the facts, and (ii) if the learned district judge was in error, whether the accused's position, in respect of the sentences, has really been prejudiced.

I now turn to the first question. The procedure governing the conduct of the proceedings before the district court in the event of an accused pleading guilty to the charge preferred against him is set out in s 180 of the CPC, which, so far as relevant, provides:

> The following procedure shall be observed by Magistrates' Courts and District Courts in summary trials:
>
> (a) when the accused appears or is brought before the court, a charge containing the particulars of the offence of which he is accused shall be framed and read and explained to him and he shall be asked whether he is guilty of the offence charged or claims to be tried;
> (b) if the accused pleads guilty to a charge whether as originally framed or as amended, the plea shall be recorded and he may be convicted on it:
>
> Provided that before a plea of guilty is recorded the court shall ascertain that the accused understands the nature and consequences of his plea and intends to admit without qualification the offence alleged against him;

There is no express provision in the CPC requiring an accused to admit a statement of facts presented to court before his plea of guilty can be accepted. The only requirement is that contained in the proviso to para (b) of s 180, namely, that the accused understands the nature and consequences of his plea and intends to admit without qualification the offence alleged against him. However, a practice has developed in which, before a plea of guilty by the accused is accepted by the court, a statement of facts setting out the circumstances in which the offence is alleged to have been committed is read to the accused by the prosecution and the accused is required to admit such statement. Several decided cases have stressed the importance of a statement of facts being recorded and admitted by the accused. In *Palan* v *PP*,[1] where the accused was convicted of the offence of voluntarily causing grievous hurt to one Anggamah, the record merely stated: 'Accused in person. Convicted on plea. Sentenced to six years' RI'. Murison CJ said:

> As an appeal court I think we ought to have some evidence taken by the trial judge to indicate the nature and quality of the criminal act for which the sentence is given. Without that evidence we cannot be in a position to say whether the sentence is fair or not.

In *Re Mohamed Miskin Son of Kader Bacha*,[2] the accused pleaded guilty to a charge of causing mischief by cutting a cable belonging to the Posts and Telegraphs Department and was convicted and fined. Upon a criminal revision, Poyser CJ set aside the conviction and held that the accused's statement was in effect an admission that he was responsible for the cutting of the cable and there was no indication in the statement that he intended to cut the cable or knew that he was likely to do so. He said, at p 290:

> To establish a charge of mischief it must be proved that the accused intended to cause wrongful loss or damage or that he committed an act with the knowledge that he was likely to cause such loss or damage.
>
> The legal position was not explained to the accused when he pleaded guilty to the charge, his statement was in effect an admission that he was responsible for the cutting of the cable but there was nothing in his statement to indicate that he intended to cut the cable or knew he was likely to do so.
>
> Probably the accused's conduct was negligent, but negligence is not necessarily mischief, and although the accused might be held liable in civil proceedings for damages I do not think the facts disclosed justify a conviction under the Penal Code.

In *Cheng Ah Sang* v *PP*,[3] the accused pleaded guilty to the charge of keeping or using a house as a gambling house. On his plea the magistrate proceeded to take a summary of the facts alleged. He then questioned the accused on those facts and found that the accused did not admit the gaming was for money. He then altered the plea to one claiming trial. Laville J had this to say, at p 82:

> This procedure is open to criticism in that it elicits the prosecution evidence before the court has satisfied itself as to whether the accused's plea of guilty is acceptable. A magistrate should satisfy himself by questioning the accused that he does really understand the charge and admits each ingredient that goes to make it up, before he records a plea of guilty by the accused and should record that the accused understands the charge before entering his plea of guilty.

More to the point is the decision of Jobling J in *Chin Ban Keat* v *R*.[4] In that case the accused, through his counsel, pleaded guilty to a charge of accepting an illegal gratification, an offence punishable under s 161 of the Penal Code (Cap 224, 1985 Ed) ('PC'). After a statement of facts had been given the accused was convicted. On appeal, Jobling J held, inter alia, that neither the charge nor the statement disclosed the nature of the official act alleged to have been done by the accused. He said, at p 297:

> It is clear that neither the charge nor the statement discloses the nature of the official act alleged to have been done by the appellant and the question is what effect this has on the plea of guilty to a contravention of s 161 of the Penal Code.

Later, he said, at p 298:

> An appeal does, however, lie on the question of sentence and as I have already stated I am of opinion that the facts are not set out fully enough to show the circumstances in which the offence was committed. It is, therefore, impossible to consider the adequacy of the sentence imposed and the case must go back to the lower court to have the facts fully recorded.

When recording the facts the magistrate will also have to record the accused's admission or denial of them and if the facts admitted do not constitute the offence charged the magistrate will then have to consider whether to discharge the accused or enter a plea of not guilty and proceed to trial.

In the circumstances I think the only practical course is to deal with this matter on revision and order a retrial.

Mr Conaghan has asked for directions whether after a plea of guilty evidence should be led as to the facts alleged or if they should be merely stated by the prosecuting officer.

This is a matter of practice which must be left to the presiding magistrate. The aim of the court is to record the facts alleged by the prosecutor and admitted by the accused and to satisfy itself that they constitute the offence charged.

In most cases this can be satisfactorily achieved by a statement by the prosecuting officer followed by an admission by the accused but in cases of doubt or difficulty it may be advisable to have evidence led as to the facts. The course adopted in each case must be left to the court's discretion.

The practice of the prosecution presenting to court a statement of facts setting out the circumstances in which the offence was committed and the accused admitting such facts undoubtedly enables the court to ascertain, which it is required to do under s 180(b) of the CPC, that the accused (i) understands the nature of his plea of guilty, and (ii) intends to admit without qualification the offence alleged against him. In so far as the second limb is concerned, what is required is the admission by the accused of the offence without qualification. It is therefore essential that what the accused admits in the statement of facts contains all the ingredients that constitute the offence with which he is charged. It is not essential, however, that the accused should admit every iota of facts contained in the statement. If what he admits contains all the ingredients that constitute the offence and what he disputes or does not admit is irrelevant or immaterial to the offence, such an admission, in my opinion, is sufficient for the purpose of s 180(b), and the court should accept his plea of guilty. Such an admission is an admission without qualification of the offence alleged against him. If there is any doubt as to the adequacy of an admission, then, as Jobling J held in *Chin Ban Keat* v *R*,[4] evidence may be led as to the facts. That is a matter for the court to decide.

I now return to the facts of the instant case. The accused admitted before the district judge on 10 May 1989 that he did traffic in drugs of the kind and quantity, in the manner and at the time and place as specified in the charge. What he disputed or did not admit was the complicity of Tan in the commission of the offence; in effect, he was disputing the existence of the common intention with Tan in furtherance of which he was alleged to have committed the offence. Since he admitted committing the offence of trafficking in drugs, it is immaterial whether or not there existed the common intention between him and Tan. In such a case, it is not necessary to rely on or have recourse to the concept of common intention as provided in s 34 of the PC. Section 34 does not create a substantive offence; it lays down only a rule of evidence to infer joint responsibility for a criminal act performed by a plurality of persons: see *Ratanlal & Dhirajlal's Law of Crimes*, Vol 1 at p 86. In my opinion, that admission would be sufficient for the purpose of s 180(b) of the CPC, and the learned district judge ought in those circumstances to have accepted his plea of guilty and dealt with the three charges that were preferred against the accused.

I now turn to the second question. It is the argument of counsel for the accused that, had the accused's plea of guilty in DAC 2754 of 1987 been adopted, then the term of imprisonment of five years imposed for the offence in that case would have been ordered to run concurrently with the two terms of imprisonment of three years and one year in DAC 13751 of 1988 and DAC 13752 of 1988 respectively, which were ordered to run consecutively. The net result would have been a term of imprisonment of five years taking effect retrospectively on 23 December 1988. That argument is based on the assumption that the learned district judge on 10 May 1989 in dealing with the three charges would have passed the same sentences as were passed on 17 May 1989 and 20 February 1990 and would have ordered the latter sentence to run concurrently with the two earlier sentences. The learned district judge, however, might have ordered longer terms of imprisonment in respect of the charges in DAC 13751 of 1988 and DAC 13752 of 1988 and might have adopted the following permutation in the treatment of the sentences: the terms of imprisonment in DAC 13751 of 1988 and DAC 13752 of 1988 to run concurrently and the term of imprisonment in DAC 2754 of 1987 to run consecutively with the other two terms. In such a case, the term of imprisonment in totality would be not less than eight years taking effect from 23 December 1988. I therefore find myself in agreement with the learned district judge, Mr Remedios, that it would be difficult to say, and it would not be right to speculate, what the court would have ordered if it had dealt with the three cases together on 10 May or for that matter on 17 May 1989. It therefore cannot be said that the accused's position in terms of the sentences passed on him had been seriously prejudiced by the events that had occurred.

I now turn to the next argument of counsel. It was argued that the learned district judge in imposing the term of five years' imprisonment took into account the recent amendments to the Misuse of Drugs Act (Cap 185, 1985 Ed) whereby, inter alia, the punishment for trafficking in cannabis was enhanced. This argument I accept. The accused ought to be punished in the circumstances which then existed and in accordance with

the legislation then in force, and it is not correct to take into account subsequent legislation. The learned district judge ought not to have been influenced, as he appears to have been influenced, by the subsequent legislation enhancing the punishment for the offence.

I now turn to the last question whether I ought to disturb the sentence passed on the accused. The minimum term required to be imposed by statute at the time was a term of imprisonment of three years and three strokes of cane. I am in entire agreement with the learned district judge that this would not be an appropriate case for imposing only the minimum term of three years. The amount of cannabis that was transported by the accused was 2.6kg, which was a large amount. In addition, while he was on bail pending his trial on this charge he committed two other offences, namely, trafficking in drugs and possession of drugs. These are the two offences in respect of which charges were brought against him to which he pleaded guilty, and he was convicted and sentenced. These, of course, are not his previous convictions, but nonetheless they show the attitude of mind and the conduct of the accused; he was not as remorseful as he claimed to be. In the circumstances, the term of imprisonment of five years imposed by the learned district judge, though on the high side, cannot in the circumstances be considered as manifestly excessive as to warrant an intervention by an appellate tribunal. Accordingly, the appeal is dismissed.

Appeal dismissed.

Solicitors: *Sant Singh & Partners; Khattar Wong & Partners.*

Reported by *Mathavan Devadas*

Woh Hup (Pte) Ltd v Property Development Ltd

HIGH COURT (SINGAPORE) — ORIGINATING SUMMONS NO 1145 OF 1989
CHAN SEK KEONG J
8 MARCH 1991

Arbitration — Award — Enforcement — Whether court had jurisdiction to hear the action even though defendants not present or represented — Whether Singapore law or Sri Lankan law or some other law was the proper law of the contract, arbitration agreement, curial law, law of reference — Whether there were disputes referable to arbitration — Arbitration Act (Cap 10, 1985 Ed), s 20

In 1982, the defendants as employers accepted the plaintiffs' tender for the construction of a building in Colombo, Sri Lanka. The form of the contract eventually adopted by the parties was the standard JCT form; the parties agreeing to delete the usual cl 35 in the JCT form on arbitration and substituting in its place an arbitration clause which contained neither a choice of the proper law of the contract, the law of the arbitration agreement or the seat of the arbitration.

In 1986 disputes between the parties arose concerning the entitlement of the plaintiffs to extension of time to complete the works, liquidated and ascertained damages, non-payment of certificates and defective works. The plaintiffs then requested the architects to settle the matters in dispute. The architects suggested that they had no power to decide on the disputes and that the matters be raised before an arbitrator. The plaintiffs then sought the concurrence of the defendants in the appointment of an arbitrator but the defendants denied the plaintiffs' right to arbitration. Notwithstanding, the plaintiffs proceeded to arbitration in accordance with the arbitration agreement. The arbitrator published an award in which he awarded and directed the defendants to pay the plaintiffs damages for wrongful repudiation, costs, interest and arbitrators' fees and costs. The plaintiffs brought the present action to enforce the arbitration award.

Held, allowing the application:

(1) The arbitrator had complied with all procedural requirements under Singapore law in holding the arbitration and the defendants had been notified of every step taken or direction given by the arbitrator.

(2) The defendants had reserved the right not to submit to the jurisdiction of the court; but this reservation was made on 16 October 1989, well after they had entered unconditional appearance on 11 March 1989. Since the defendants could have entered conditional appearance with a view to setting aside the service of the originating summons on the ground of lack of jurisdiction, but failed to do so, the purported reservation had no effect. Accordingly, the defendants had submitted to the jurisdiction of the court.

(3) There was a preponderance of relevant factors showing that either the parties had contemplated Singapore law as the proper law or that it was the proper law by necessary implication from a consideration of the terms of the building agreement.

(4) Consequently the law of the arbitration agreement (as a general rule) and the curial law (in the absence of an express choice of the proper law of individual reference) would be Singapore law as well.

(5) As the proper law of the contract was Singapore law, and it would be more practical, convenient and sensible to